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Supreme Court of the United States

OCTOBER TERM, 1940

No. 463

CHARLES J. WOLFE,

Petitioner,

vs.

C. F. MURPHY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO BE ADDRESSED TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Charles J. Wolfe, respectfully petitions for a Writ of Certiorari to review the judgment and decree of the United States Circuit Court of Appeals for the Eighth Judicial Circuit sustaining the Order of the District Court of the United States in and for the Northern District of Iowa and thereupon show and state to the Court as follows:

I.

STATEMENT OF MATTER INVOLVED

All of the events mentioned herein took place in Iowa, but during all of the times mentioned in the Complaint, plaintiff was, and now is, a resident of Minnesota.

The facts in the case are set forth in the Memorandum Opinion of the Court below (R. 16), and are as follows:

> "A civil action for damages for malicious prosecution. The complaint alleges that on May 10, 1932, defendants with another having maliciously conspired to cause complainant to be charged, arrested and prosecuted for the crime of libel, maliciously filed three separate informations before a justice of the peace charging complainant with the crime of libel and caused said justice to issue a warrant under which complainant was arrested and imprisoned on the 11th day of May, 1932, and held to await the action of a grand jury at the October, 1932, term of the District Court of Iowa for Clayton County. That all defendants appeared before the grand jury, and that the grand jury made a report failing to indict the complainant. The defendants answering plead the statute of limitations as an affirmative defense, alleging that on or about the 20th day of October, 1932, the grand jury of Clayton County, Iowa, made its report, a copy of which is attached to complainant's amended complaint recommending to the Court the discharge of the complainant. That thereupon the District Court entered upon its calendar the following entry: 'Defendant discharged on recommendation of Grand Jury as per written statement on file.' That on October 6, 1937, upon motion of complainant, said District Court of Iowa entered its 'Findings, Order and Judgment of Court,' a copy of which is attached to the defendants' Answer. In such Order the Court finds that the Grand Jury at the October, 1932, term, and on the third day

of said term was empaneled. That complainant appeared in open court and waived challenge to said Grand Jury. That on the tenth day of the term, which was on October 20th, 1932, the Grand Jury made its report and the Court entered upon its calendar the following: 'Defendant discharged on recommendation of Grand Jury as per written statement on file.' The Court further found that during the year 1932 and for some time prior thereto it was the custom of the Clerk to make no record of a criminal action in which the Grand Jury returned no bill and failed to indict. It appears, therefore, that the only record made by the District Court was the entry upon the Court calendar. The complainant was, however, promptly discharged on the 20th day of October, 1932."

The defendants answered, thus making an issue of much of the allegations in the Amended Complaint, and set up as an affirmative defense the Statute of Limitations of Iowa governing such actions. The Court found that the statute had run, and for that reason held that the questions of fact at issue would not need to be tried on the merits, and therefore dismissed the Complaint.

II.

THE FOLLOWING QUESTION IS INVOLVED:

The effect of a *nunc pro tunc* order issued by the Iowa Court which acted to immediately cut off petitioner's right to bring his action by reason of setting in motion the statute of limitations at a date long preceding the date of such order.

III.

REASONS FOR GRANTING WRIT

The decision of the Circuit Court of Appeals here sought to be reviewed is:

First: In conflict with the applicable and controlling provisions of local law.

Second: Opposed to and in conflict with other decisions of the State Court.

IV.

PRAYER

Petitioner accordingly prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Eighth Judicial Circuit and the judges thereof, commanding that the Court certify and send to this Court a full and complete record of the transcript and all proceedings of said United States Circuit Court of Appeals in the cause therein entitled, *Charles J. Wolfe, Appellant, vs. C. F. Murphy, et al., Appellees,* No. 11,697, on the docket of that Court for 1940, to the end that the final judgment rendered by that Court in such case may be reviewed and determined by this Court; and

Petitioner further prays that he may have such other and further relief in the premises as to this Honorable Court may seem appropriate and in conformity with the law; and

That the judgment of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this cause and every part thereof be reversed by this Honorable Court and your petitioner will ever pray.

This is the first application for a Writ of Certiorari in this cause.

CHARLES J. WOLFE,
Petitioner,
BY GEORGE E. WALLACE,
Attorney for Petitioner,
Minneapolis, Minnesota.